

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

XIAORONG LAN,

Plaintiff,

VS.

UNIVERSITY OF TEXAS AT SAN ANTONIO, BIT OFFICE AT UTSA, DR. JUAN MANUEL SANCHEZ, ASSOCIATE DEAN, CARLOS ALVAREZ COLLEGE OF BUSINESS; and HARRISON LIU, PHD, ADVISOR, CARLOS ALVAREZ COLLEGE OF BUSINESS,

Defendants.

[illegible]

CIVIL ACTION NO. SA-22-CV-769-FB

ORDER ACCEPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

The Court has considered the Report and Recommendation of United States Magistrate Judge filed in the above styled and numbered cause on August 8, 2022 (docket #9), and the Motion for Objection filed by the plaintiff on August 22, 2022 (docket #14).

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of them. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Memorandum and Recommendation and determine whether they are either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

On the other hand, any Report or Recommendation to which there are objections requires de novo review by the Court. Such a review means that the Court will examine the entire record, and will

make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Commission*, 834 F.2d 419, 421 (5th Cir. 1987).

In the Report, Magistrate Judge Chestney explains that the Court will only order service of Plaintiff's Complaint on Defendant University of Texas at San Antonio (UTSA) because Title VII and the ADEA do not provide for individual liability. Therefore, Dr. Sanchez and Dr. Liu should not be served with this lawsuit. Similarly, the Behavioral Intervention Team at UTSA (BIT), which is a team of UTSA staff and faculty, should not be served, as Title VII and the ADEA only provide for suits against a plaintiff's employer, which was UTSA, not the agents of that employer. Based on the filings before the Court, Magistrate Judge Chestney concludes that Plaintiff has failed to plead any claim upon which relief can be granted against BIT, Dr. Sanchez, and Dr. Liu and therefore recommends to this Court that these three Defendants be dismissed pursuant to 28 U.S.C. § 1915(e).

The Court has reviewed the Plaintiff's objections and conducted a de novo review of those issues raised by the Plaintiff. The Court finds, after careful consideration of the record and the Report and Recommendation, that the objections lack merit. Therefore, this Court hereby accepts, approves, and adopts the Magistrate Judge's factual findings and legal conclusions contained in the Report and Recommendation filed on August 8, 2022 (docket #9). The Report and Recommendation shall be accepted pursuant to 28 U.S.C. § 636(b)(1) such that Defendants Dr. Juan Manuel Sanchez, Dr. Harrison Liu, and the Behavior Intervention Team at UTSA (BIT) shall be dismissed from this case pursuant to 28 U.S.C. § 1915(e).

Accordingly, it is hereby ORDERED that the Report and Recommendation of United States Magistrate Judge, filed in this case on August 8, 2022 (docket #9), is ACCEPTED such Defendants Dr.

Juan Manuel Sanchez, Dr. Harrison Liu, and the Behavior Intervention Team at UTSA (BIT) are
DISMISSED from this case pursuant to 28 U.S.C. § 1915(e).

It is so ORDERED.

SIGNED this 16th day of September, 2023.



FRED BIERY
UNITED STATES DISTRICT JUDGE